Supreme Court, U.S.
FILED
SEP 23 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-291

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JAMES NELSON RAMSEY,
Petitioner,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY OF
THE SUPREME COURT OF TENNESSEE,
Respondent.

BRIEF IN OPPOSITION

WILLIAM W. HUNT, III
Disciplinary Counsel
Counsel of Record
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217
(615) 361-7500

Counsel for Respondents

St. Louis Law Printing Co., Inc., 13305 Manchester Road 63131 314-231-4477

QUESTIONS PRESENTED

The following questions are presented:

Whether, in an administrative proceeding brought by a disciplinary board against an attorney —

1. — due process is violated by decisionmakers who are tainted by apparent and actual bias and prejudice, specifically:

> (a) where a majority of the members of an administrative "Hearing Panel" that held an evidentiary hearing on the disciplinary complaint admittedly have significant pecuniary interests that are adverse to the person over whom they sit in judgment and where they nevertheless:
>
> > (i) fail to timely disclose these interests;
> >
> > (ii) decline to disqualify themselves *sua sponte:* and
> >
> > (iii) refuse to disqualify themselves when subsequently challenged to do so? and
>
> (b) where the "Trial Court" Chancellor, who was charged with reviewing *de novo* the Hearing Panel's "Findings and Judgment" and who had previously expressed his views about the Petitioner's "appalling" conduct, yet refuses to disqualify himself *sua sponte*?

2. — it is a violation of due process for the charging document to confound factual averments and legal conclusions, to include allegations of misconduct completely untethered to any alleged facts, and to assert violations of law for which absolutely no evidence was ever introduced and thus to fail to provide constitutionally adequate notice?

3. — it is a violation of due process to impose disciplinary sanctions on the basis of an alleged disciplinary offense — a "pattern of behavior" — that is not included in the applicable attorney Disciplinary Rules?

4. — due process is denied where the Hearing Panel and the Chancellor fail to make a true judicial determination of the facts and the law?

5. — it is a violation of due process for all the decisionmakers below — the Hearing Panel, the Chancellor, and the Tennessee Supreme Court — to consider allegations of prior misconduct, allegations which had been previously investigated, adjudicated, and dismissed?

6. — due process is violated where no proof was adduced to support the putative offenses and where the evidence that was placed in the record was misconstrued? and

7. — it is a breach of due process to place an elected public official on attorney disciplinary probation for a term that is specifically tied to, and coextensive with, his term in office?

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement of the Case	1
Argument	3
I. Petitioner Has Already Served His Suspension	3
II. This Case Does Not Present Issues Sufficiently Important For This Court To Review, Nor Does This Matter Involve A Miscarriage Of Justice	3
III. There Was No Due Process Violations In The Procedures That Lead To The Discipline Of The Petitioner	4
1. The Courts And Hearing Panel Were Not Biased	4
2. Petitioner Was Provided Adequate Notice Of The Charges Against Him	4
3. Tennessee Supreme Court Correctly Considered The Petitioner Guilty Of A "Pattern" Of Contemptuous Behavior	5
4. The Hearing Panel, The Chancellor, And The Supreme Court Made A "True Judicial Determination Of The Facts And The Law"	6
5. There Was No Improper Use Of Previously Considered Misconduct	6

6. There Was Sufficient Evidence To Find Petitioner Guilty Of Violating The Attorney's Code Of Ethics In Tennessee... 7

7. The Decision Of The Tennessee Supreme Court "Suspending" Part Of The Term Of Suspension Of The Petitioner Is Proper 8

Conclusion 9

Certificate of Service 9

APPENDIX:

A. Rule 9, Tennessee Supreme Court A-1

TABLE OF AUTHORITIES

Page

Cases:

Appellate Division v. Erdmann, 33 NY2d 559, 347 NYS2d 441, 301 N.E.2d 426 (1972) 5

In Re: Vincenti, 458 A.2d 1268 at 1270 (N.J. 1983) 5

In the Matter of An Anonymous Member of the State Bar of Arizona, 624 P.2d 1286 (Arizona 1981) 7

See, Disciplinary Board of the Supreme Court v. Banks, 641 S.W.2d 501 (Tenn. 1982) 7

Rules:

Rule 8, Rules of the Supreme Court of Tennessee 7

Rule 9 of the Supreme Court of Tennessee 1,2,6

Miscellaneous:

Standards for Imposing Lawyer's Sanctions, §99.2..... 5

No. 89-291

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JAMES NELSON RAMSEY,
Petitioner,

vs.

BOARD OF PROFESSIONAL RESPONSIBILITY OF
THE SUPREME COURT OF TENNESSEE,
Respondent.

BRIEF IN OPPOSITION

The Board of Professional Responsibility of the Supreme Court of Tennessee ("the Board"), the Respondent, respectfully submits this brief in opposition to the petition for writ of certiorari to the Supreme Court of Tennessee that was filed on August 21, 1989 by James Nelson Ramsey the Petitioner.

STATEMENT OF THE CASE

The Petitioner, James Nelson Ramsey, is an attorney licensed by the Supreme Court of Tennessee to practice before the Tennessee Courts. He is currently serving as the District Attorney in Anderson County, Tennessee.

Pursuant to Rule 9 of the Supreme Court of Tennessee (hereinafter cited as Rule 9) (a copy of said Rule is attached as Appendix A to Respondent's brief), attorney-disciplinary proceedings were filed August 29, 1985.

(The Petition for Discipline is attached as Appendix O to Petitioner's brief.)

A hearing on the merits of this Petition was conducted on March 16 and 17, 1987 by a Hearing Panel of the Board of Professional Responsibility. On April 8, 1987 the Hearing Panel issued its "Findings and Judgment". (A copy of this decision is attached as Appendix G of Petitioner's brief.) The Hearing Panel recommended the imposition of a 180 days suspension of Petitioner's law license.

Pursuant to the aforementioned Rule 9, Petitioner filed a Petition for Certiorari to the Anderson County Chancery Court. Said Court affirmed the decision of the Hearing Panel. (A copy of the Decision of the Anderson County Chancery Court is attached as Appendix E and F of Petitioner's brief.)

Petitioner then appealed to the Supreme Court of Tennessee. On April 17, 1989 the Supreme Court of Tennessee entered a Decision modifying the judgment of the Hearing Panel and the Anderson County Chancery Court. The Supreme Court of Tennessee ordered that, "The suspension of Petitioner's Law license be for 45 days. The remaining 135 days suspension would be held in "abeyance" provided the Petitioner was not again found in contempt of court and in violation of the Disciplinary Rules of this court and the remainder of his term of ending August 31, 1980." (Appendix A of Petitioner's brief.)

ARGUMENT

I. PETITIONER HAS ALREADY SERVED HIS SUSPENSION.

The 45 day suspension of Petitioner's law license commenced on July 20, 1989. It, therefore, expired on September 3, 1989. (Petitioner's Appendix A.) Reinstatement was automatic. (Respondent's Appendix A.) Since the suspension has been concluded, Respondent submits that the Petitioner is basically seeking an advisory opinion by this Court. Therefore, this appeal should be dismissed or the decision of the Tennessee Supreme Court affirmed.

II. THIS CASE DOES NOT PRESENT ISSUES SUFFICIENTLY IMPORTANT FOR THIS COURT TO REVIEW, NOR DOES THIS MATTER INVOLVE A MISCARRIAGE OF JUSTICE.

Petitioner submits that this Court should grant certiorari "because the issues raised are both novel and important... (and) in order to prevent a gross miscarriage of justice."

The discipline imposed upon Petitioner occurred because of a pattern of contemptuous behavior by Petitioner in the courts. In four separate instances Petitioner was found in contempt of court. Each time he had adequate opportunity to appeal. (He did appeal twice and his contempt findings were confirmed on these occasions.) Clearly, an attorney guilty of such contemptuous behavior merits discipline. Moreover, none of the issues presented by Petitioner are sufficiently novel and important to mandate consideration by this Court.

Therefore, Disciplinary Counsel submits this matter is not of sufficient importance to require consideration by the Supreme Court of the United States.

III. THERE WAS NO DUE PROCESS VIOLATIONS IN THE PROCEDURES THAT LEAD TO THE DISCIPLINE OF THE PETITIONER.

1. The Courts And Hearing Panel Were Not Biased.

Petitioner states that he was denied due process because the Hearing Panel and Chancery Court that heard his matter were biased.

Petitioner argues that the Hearing Panel was biased since two of the Hearing Panel members during the pendency of this attorney-disciplinary matter had cases pending before the same judge in whose court Petitioner's contemptuous behavior occurred. Respondent submits that this is an insufficient showing of bias so as to mandate a finding that Petitioner was denied due process. Moreover, Petitioner had the right to seek to recuse any members of the Panel and failed to file any motion to recuse until after the verdict was rendered against him. Finally, as the Supreme Court noted, the standard for review on his appeal to the Chancery Court was "de novo" and therefore any error was cured by his appeal.

Petitioner also charges the Judge who heard his initial appeal for the Anderson County Chancery Court was biased. However, Petitioner never filed a motion for that Judge to recuse himself and, in fact, filed a document which stated, "Petitioner Ramsey feels that Judge Inman will be as fair as any other Judge who might sit on this case." At the time Petitioner made this statement he was aware of all potential conflicts of interest that might exist as to the Judge. Moreover, the Tennessee Supreme Court noted that its review was also "de novo" and, therefore, any review by them would cure any bias below.

2. Petitioner Was Provided Adequate Notice Of The Charges Against Him.

Petitioner also argues that he was provided inadequate notice of the charges against him. The charges brought against Peti-

tioner are found in Petitioner's Appendix O. It is difficult to perceive how the Petition could be more clearly worded. Moreover, as noted by the Tennessee Supreme Court, page 17-18 of its Opinion, (Petitioner's Appendix O).

> "Counsel, on direct examination of Appellant went over the allegations in the Petition paragraph by paragraph, and Appellant's answer to counsel do not indicate any misunderstanding by him as to what he was being charged with."

3. Tennessee Supreme Court Correctly Considered The Petitioner Guilty Of A "Pattern" Of Contemptuous Behavior.

Petitioner alleges that it was a violation of due process for him to be found guilty of a "pattern of contemptuous behavior".

The finding of the Hearing Panel, the Anderson County Chancery Court, and the Tennessee Supreme Court that the contemptuous behavior by Appellant was part of a pattern and not a solitary isolated incident was an ingredient to the determination of whether discipline was warranted, i.e. a single, isolated incident of disrespect to the Court might not alone be a violation of the Disciplinary Rules sufficient to warrant discipline. Repeated findings of contemptuous behavior by the Court would certainly be such a violation. See for instance, *In Re: Vincenti,* 458 A.2d 1268 at 1270 (N.J. 1983); *Appellate Division v. Erdmann,* 33 NY2d 559, 347 NYS2d 441, 301 N.E.2d 426 (1972). Furthermore, repetitive, frequent and cumulative contemptuous behavior warrants the imposition of greater discipline than ordinarily warranted. The establishment of a pattern of contemptuous behavior addresses the amount of discipline that should be imposed. See, *ABA Standards for Imposing Lawyer's Sanctions,* § 99.2. Petitioner's argument is clearly without merit and does not present a constitutional question.

4. The Hearing Panel, The Chancellor, And The Supreme Court Made A "True Judicial Determination Of The Facts And The Law"

Petitioner next argues that he was denied a "true judicial determination of the facts" and therefore denied due process.

A copy of the Opinions of the Hearing Panel, the Chancellor, and the Tennessee Supreme Court are attached as Petitioner's Appendixes A, F, and G. A review of these decisions indicate that Petitioner's position is without merit. Respondent would further note that due process does not dictate the full length and breadth of opinions of judicial bodies. There has never been any demonstration by Petitioner that he did not understand the decisions of the courts below.

5. There Was No Improper Use Of Previously Considered Misconduct.

As previously noted, the Petition for Discipline involved allegations of (4) contempts. Preliminary investigations had been made by the Board of Professional Responsibility's investigators in regards to two of the prior contempts (March 17, 1979 and October 16, 1979). The Board made a decision to not file formal charges against the Respondent at that time and closed the files.[1]

Petitioner alleges that the above action by the Board was res judicata as to these two contempts. Respondent acknowledges that if there had been formal charges brought he would have

---

[1] The Board is simply the administrative body that handles the prosecution of attorney-discipline. It is charged with hiring the Disciplinary Counsel, deciding whether or not to file formal charges and directing the prosecution of those charges. It is not charged with making final determinations of guilt or innocence on those charges. A separate group of individuals appointed by the Supreme Court, Hearing Panel members, are charged with making such determinations. See, Tennessee Supreme Court Rule 9. (Respondent's Appendix A.)

been barred from proceeding on these two contempts. However, there were no formal charges filed and no Hearing Panel was ever appointed and no hearing was ever held. In the language of criminal law, jeopardy did not attach. The Board simply made its decision that it would stop a preliminary investigation. It did not even dismiss the charges; it simply closed the file. See, *In the Matter of An Anonymous Member of the State Bar of Arizona,* 624 P.2d 1286 (Arizona 1981).

Petitioner also complains that the introduction of proof of a prior disciplinary action resulting in a Public Censure was improper. Respondent at no time sought to re-litigate this prior disciplinary action. The relevance of this Public Censure was limited to the aggravation of any discipline to be imposed by indicating that Petitioner had a past history of contemptuous behavior, that the past history was continuing to the present, and that the Petitioner showed no indication of reform. *See, Disciplinary Board of the Supreme Court v. Banks,* 641 S.W.2d 501 (Tenn.1982).

6. There Was Sufficient Evidence To Find Petitioner Guilty Of Violating The Attorney's Code Of Ethics In Tennessee.

Petitioner suggests that the evidence was insufficient to support him being found guilty of violating the Code of Ethics.

The proof was simple and straightforward. On four separate occasions Petitioner had been found in contempt of court. Petitioner never disputed he was found guilty of such contemptuous behavior.

Respondent submits that without question contemptuous behavior is governed by the Tennessee Code of Ethics (Rule 8, Rules of the Supreme Court of Tennessee). Petitioner's position is without merit.

7. The Decision Of The Tennessee Supreme Court "Suspending" Part Of The Term Of Suspension Of The Petitioner Is Proper.

Petitioner attacks that part of the Tennessee Supreme Court's decision which stated: "However, under all of the circumstances of this case, we are of the opinion that it would be appropriate to have the Appellant's license suspended for only 45 of the 100 day period, and the remaining 135 days will be suspended provided the Appellant is not again found in contempt of court and in violation of the Disciplinary Rules of this Court during the remainder of his term of office ending August 31, 1990. If Appellant is again found to have violated Rule 8 of this court, then his license to practice law will be automatically suspended for the remaining 135 days." (Petitioner's Appendix A.)

Petitioner submits that this is an improper penalty by the court. Such discipline is no different from suspended sentences, orders of probation, orders of parole, etc., imposed in both criminal and administrative licensing matters throughout the country. There is no failure of due process here.

Furthermore if there were any error here, it would inure to the benefit of Petitioner. The original discipline imposed was 180 days; therefore, if Petitioner were correct in his argument, the remedy would be that the original 180 day suspension should be re-imposed.

CONCLUSION

Wherefore, Respondent respectfully submits that the Petitioner has not presented sufficient questions so as to need further argument and Petitioner further respectfully moves this Court to deny the Petition for Certiorari, or in the alternative, to affirm the Judgment entered in the cause of the Supreme Court of Tennessee.

Respectfully submitted,

/s/ William Walter, Hunt, III
Disciplinary Counsel

Board of Professional
Responsibility of the Supreme
Court of Tennessee
1101 Kermit Drive, Suite 730
Nashville, Tennessee 37217
(615) 361-7500

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am mailing a copy of this Brief In Opposition to Roger M. Adelman, Esquire, 1800 M Street, N.W., South Lobby - 9th Floor, Washington, D. C. 20036, and to James Foglesong, Esquire, 612 Gay Street, 3rd Floor, Knoxville, Tennessee 37902, Counsels of Record.

/s/ William Walter Hunt, III
Disciplinary Counsel

APPENDIX

APPENDIX A

TENNESSEE SUPREME COURT RULES

RULE 9. DISCIPLINARY ENFORCEMENT

Table of Contents

MISCONDUCT

Section

1. Jurisdiction.
2. Disciplinary Districts.
3. Grounds for Discipline.
4. Type of Discipline.
5. The Board of Professional Responsibility of the Supreme Court of Tennessee.
6. Hearing Committees.
7. Disciplinary Counsel.

PROCEDURE

8. Investigation.
9. Complaints Against Board Members.
10. Refusal of Complainant to Proceed, Compromise, Etc.
11. Matters Involving Related Pending Civil or Criminal Litigation.
12. Service.
13. Subpoena Power, Witnesses and Pre-trial Proceedings.
14. Attorneys Convicted of Crimes.
15. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution.
16. Discipline by Consent.
17. Reciprocal Discipline.
18. Disbarred or Suspended Attorneys.
19. Reinstatement.
20. Periodic Assessment of Attorneys.

DISABILITY

21. Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated.
22. Appointment of Counsel to Protect Clients' Interests When an Attorney Is Transferred to Disability Inactive Status Because of Incapacity or Disability, or He Disappears or Dies, or Is Suspended or Disbarred, or Is Alleged to Be Incapacitated From Continuing the Practice of Law Pursuant to Section 21.2.
23. Additional Rules of Procedure.

MISCELLANEOUS PROVISIONS

24. Expenses, Audit, Reimbursement of Costs.*
25. Confidentiality.
26. Ethics Opinions.
27. Immunity.

MISCONDUCT

Section 1. Jurisdiction

1.1 Any attorney admitted to practice law in this State and any attorney specially admitted by a court of this State for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court, the Board, the hearing committees, hereinafter established, and the Circuit and Chancery Court.

1.2 Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring, suspending or expelling its members from membership.

---

* Suggested title added by Publisher.

1.3 The respondent or the Board may have a review of the judgment of a hearing committee in the manner provided by T.C.A. § 27-901 et seq., except as otherwise provided herein. The review shall be on the transcript of the evidence before the hearing committee, its findings and judgment and upon such other proof as either party may desire to introduce. The trial judge shall weigh the evidence and determine the facts by the preponderance of the proof. Either party dissatisfied with the decree of the circuit or chancery court may prosecute an appeal direct to the Supreme Court where the cause shall be heard upon the transcript of the record from the circuit or chancery court, which shall include the transcript of evidence before the hearing committee. Prior decisions of this Court holding that appeal of disciplinary proceedings must be taken to the Court of Appeals because TCA § 16-408 so requires are expressly overruled.

1.4 An appeal from the recommendation or judgment of a hearing committee must be filed in the circuit or chancery court of the county wherein the office of respondent was located at the time the charges were filed with the Board.

1.5 The Chief Justice shall designate a trial judge or chancellor, regular or retired, who shall not reside within the geographic boundaries of the chancery division or circuit court wherein the office of the respondent was located at the time the charges were filed with the Board. It shall be his duty to try the case, and enter judgment upon the minutes of the circuit or chancery court of the county where the case is heard, and the judgment shall be effective as if he were the regular presiding judge of said court. The duty is imposed upon the clerks and the regular trial judge to promptly notify the Chief Justice of the filing of an appeal in disciplinary cases.

[Amended August 25, 1983.]

Section 2. Disciplinary Districts

Disciplinary jurisdiction in this State shall be divided into the following districts:

District I—the counties of Johnson, Carter, Cocke, Greene, Hancock, Grainger, Jefferson, Sullivan, Washington, Unicoi, Hawkins, Claiborne, Hamblem and Sevier.

District II—the counties of Campbell, Anderson, Roane, Blount, Morgan, Union, Knox, Loudon and Scott.

District III—the counties of Polk, Hamilton, Sequatchie, Bledsoe, Meigs, Monroe, Bradley, Marion, Grundy, Rhea and McMinn.

District IV—the counties of White, Van Buren, Pickett, Putnam, Overton, Clay, Franklin, Moore, Bedford, Rutherford, Wilson, Trousdale, Warren, Fentress, Cumberland, Smith, Jackson, Coffee, Lincoln, Marshall, Cannon, DeKalb and Macon.

District V—the county of Davidson.

District VI—the counties of Giles, Wayne, Lewis, Maury, Humphreys, Cheatham, Montgomery, Robertson, Lawrence, Perry, Hickman, Dickson, Houston, Stewart, Sumner and Williamson.

District VII—the counties of Henry, Carroll, Henderson, Hardeman, Hardin, Benton, Decatur, Chester, Fayette, McNairy and Madison.

District VIII—the counties of Weakley, Lake, Gibson, Haywood, Tipton, Obion, Dyer, Crockett and Lauderdale.

District IX—the county of Shelby.

Section 3. Ground for Discipline

3.1 The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law.

3.2 Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office, the Code of Professional Responsibility of the State of Tennessee, or T.C.A. § 29-308, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

3.3 Conviction of a serious crime shall similarly be grounds for discipline as set forth in Section 14.

Section 4. Types of Discipline

Misconduct shall be grounds for:

4.1 Disbarment; or

4.2 Suspension for an appropriate fixed period of time, or for an appropriate fixed period of time and an indefinite period concurrently or thereafter to be determined by the conditions imposed by the judgment. A suspension of less than one year shall not require proof of rehabilitation, a suspension of one year or more shall require proof of rehabilitation to be demonstrated in a reinstatement proceeding. No suspension shall be ordered for a specific period less than thirty days or in excess of five years. All suspensions regardless of duration shall be public and shall be subject to the provisions of Section 18;

4.3 Temporary Suspension. On petition of the Board of Professional Responsibility authorized by its Chairman or Vice-Chairman and supported by an affidavit demonstrating facts personally known to affiant, showing that an attorney has misappropriated funds to his own use, has failed to respond to the Board or Disciplinary Counsel concerning a complaint of misconduct, or otherwise poses a substantial threat of irreparable harm to the public, the Supreme Court may issue an order with such notice as the Court may prescribe imposing temporary conditions of probation on said attorney or temporarily suspending said attorney, or both. Any order of temporary probation which restricts the attorney maintaining a trust account, shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court. Any order of temporary suspension issued under this rule shall preclude the attorney, accepting any new cases but shall not preclude his continuing to represent existing clients during the first 30 days after issuance of such temporary order; however, any fees tendered to such attorney during such 30 day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Court. The attorney may for good cause request dissolution or amendment of any such temporary order by petition filed with the Supreme Court, a copy of which will be served on the Disciplinary Counsel. Such petition for dissolution shall be set for immediate hearing before the Board of Professional Responsibility or a panel of at least three of its members designated by the Chairman of the Board or in his absence the Vice-Chairman. The Board or its designated panel shall hear such petition forthwith and submit its report and recommendation to the Supreme Court with the utmost speed consistent with due process. Upon receipt of the foregoing report, the Supreme Court shall modify its order if appropriate and continue such provision of the order as may be

appropriate until final disposition of all pending disciplinary charges against said attorney;

[Amended September 18, 1986.]

4.4 Public censure; or

4.5 Private reprimand; or

4.6 Private informal admonition.

Section 5. The Board of Professional Responsibility of the Supreme Court of Tennessee

5.1 The Supreme Court shall appoint from among the licensed practitioners of law in Tennessee a nine-member board to be known as "The Board of Professional Responsibility of the Supreme Court of Tennessee" (hereinafter referred to as the "Board"), which shall consist of:

(a) Three members of the bar of this state appointed for an initial three years; and

(b) Three members of the bar of this state appointed for an initial term of two years; and

(c) Three members of the bar of this state appointed for an initial term of one year.

Subsequent terms of all members shall be for three years. No member shall serve for more than two consecutive three-year terms. Vacancies shall be filled by the Supreme Court.

5.2 The Supreme Court shall designate one member as Chairman of the Board and another member as Vice-Chairman.

5.3 The Board shall act only with the concurrence of five or more members. Five members shall constitute a quorum, provided, however, that decisions of the board to appeal from the judgment of a hearing committee or of a trial judge as provided in section 1.3, may be made in accord with the following pro-

cedure. If disciplinary counsel recommends an appeal and time restraints are such that a regular or special meeting of the board is impractical, disciplinary counsel shall circulate to the members of the board in writing the reasons for his recommendation supported by a factual report. Board members may communicate their vote for or against appeal by telephone, telegraph or regular mail. Any member of the board may request that disciplinary counsel convene a telephone conference of the board, whereupon such a conference must be convened, with at least a quorum so conferring. An affirmative vote of five (5) members of the board shall be necessary to authorize an appeal. If an appeal has been authorized by the foregoing procedure, any member of the board may demand that the question of whether or not the appeal should be dismissed be placed upon the agenda for consideration at any regular meeting of the board or special meeting convened for other business.

[Amended May 21, 1984.]

5.4 Members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

5.5 The Board shall exercise the powers and perform the duties conferred and imposed upon it by these disciplinary rules, including the power and duty:

(a) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these disciplinary rules.

(b) To appoint a chief disciplinary counsel and such assistant disciplinary counsel and staff as may from time-to-time be required to properly perform the functions hereinafter prescribed. The chief disciplinary counsel and assistant disciplinary counsel are hereinafter referred to as "Disciplinary Counsel."

(c) To assign periodically the members of hearing committees within each Disciplinary District to conduct disciplinary hearings and to review and approve, or modify recommendations by Disciplinary Counsel for dismissals or informal admonitions.

(d) To review, upon application by Disciplinary Counsel, a determination by the reviewing members of a hearing committee that a matter should be concluded by dismissal or by private informal admonition without the institution of formal charges.

(e) To privately reprimand attorneys for misconduct.

(f) To adopt rules of procedure not inconsistent with these rules.

(g) The Board shall, to the extent it deems feasible, consult with officers of local bar associations concerning any appointment it is authorized to make under these rules.

Section 6. Hearing Committees

6.1 The Supreme Court shall appoint one hearing committee within each disciplinary district. Each Committee shall consist of not less than five members nor more than 15 members of the Bar of this State who maintain an office for the practice of law within that district. Members of each hearing committee may be recommended by the President or the Board of Directors of the local bar association or associations in the district. The Board will recommend to the Court, through the Chairman, any addition to the membership within each district when it appears that more than five members are needed for that district.

6.2 Terms of members of each hearing committee shall be for three years, and such terms shall be staggered, so that one third of the members rotate off the committee each year; provided that shorter terms may be designated where necessary to observe the rotation practice. A member whose term has expired shall continue to serve with respect to any formal hearing commenced before him prior to the expiration of his term until the con-

clusion of such hearing, regardless of whether his successor has been appointed. A member who has served two consecutive three-year terms may be reappointed after the expiration of one year.

6.3 A member of the hearing committee shall approve or modify recommendations by Disciplinary Counsel for dismissals and informal admonitions.

6.4 Formal hearings upon charges of misconduct shall be conducted by a Hearing Panel consisting of three members of the hearing committee, to be designated by the Board. Such panel shall submit its findings and judgment to the Board. Each Hearing Panel shall elect its own Chairman. The Hearing Panel shall act only with the concurrence of a majority of its members.

Section 7. Disciplinary Counsel

7.1 Disciplinary Counsel shall be licensed to practice law in Tennessee, but shall not be permitted to engage in private practice, except, (1) Disciplinary Counsel hired on a temporary basis, and, (2) the Board may agree to a reasonable period of transition after appointment.

7.2 Disciplinary Counsel shall have the power and duty:

(a) With the approval of the Board, to employ and supervise staff needed for the performance of his duties.

(b) To investigate all matters involving possible misconduct assigned to him by the Chairman or Vice-Chairman of the Board.

(c) To dispose of all matters involving alleged misconduct by either dismissal, informal admonition, or the prosecution of formal charges before a hearing committee. Except in matters requiring dismissal because the complaint is frivolous and clearly unfounded on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by

Disciplinary Counsel until the accused attorney shall have been afforded the opportunity to state his position with respect to the allegations against him.

(d) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees, trial courts, and the Supreme Court.

(e) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, to cross-examine witnesses testifying in support of such petitions, and to marshal and present available evidence, if any, in opposition thereto.

(f) To file with the Supreme Court certificates of conviction of attorneys for crimes.

(g) To maintain permanent records of all matters processed and the disposition thereof.

(h) To give Advisory Ethics Opinions to a member of the bar pursuant to Section 26.

PROCEDURE

Section 8. Investigation

8.1 All investigations, whether upon complaint or otherwise, shall be initiated by the Board, acting through its Chairman or Vice-Chairman, and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may recommend dismissal, informal admonition of the attorney concerned or a private reprimand, public censure or prosecution of formal charges before a hearing committee. If the recommended disposition is dismissal or informal admonition, it shall be reviewed by the reviewing member of a hearing committee in the appropriate Disciplinary District who may approve or modify. Disciplinary Counsel may appeal to the Board the action of the

hearing committee member. If the recommended disposition is private reprimand, public censure, or prosecution of formal charges before a hearing committee, the Board shall review the recommendation and approve and modify it. The Board may determine whether a matter should be concluded by dismissal, or informal admonition; may recommend a private reprimand or public censure; or, direct that a formal proceeding be instituted before a hearing committee in the appropriate Disciplinary District and assign it to a hearing committee for that purpose. A respondent-attorney (hereafter "respondent") shall not be entitled to appeal an informal admonition by counsel or a recommended private reprimand or public censure by the Board but he may, within twenty (20) days of notice thereof, demand as of right that a formal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary District. In the event of such demand, the informal admonition shall be vacated and the recommended private reprimand or public censure shall be withdrawn, and the matter disposed of in the same manner as any other formal hearing instituted before a hearing committee.

[Amended December 19, 1984.]

8.2 Formal disciplinary proceedings before a hearing committee shall be instituted by Disciplinary Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent. The respondent shall serve his answer upon Disciplinary Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Chairman. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairman to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

Following the service of the answer or upon failure to answer the matter shall be assigned by the Chairman to a hearing committee.

If there are any issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in litigation, the hearing committee shall serve a notice of hearing upon Disciplinary Counsel and the respondent, or his counsel, stating the date and place of the hearing at least 15 days in advance thereof. The notice of hearing shall advise the respondent that he is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in his own behalf.

8.3 The hearing committee shall, in every case, submit its findings and judgment, in the form of a final decree of a trial court, to the Board within 15 days after the conclusion of its hearing. The Board shall immediately serve a copy of the finding and judgment of the hearing commmittee upon the respondent and his counsel of record. Any petition for certiorari therefrom must be filed in the circuit or chancery court having jurisdiction within 60 days of the mailing or service of such judgment.

[Amended September 24, 1987.]

8.4 If the judgment of a hearing committee is that a respondent shall be disbarred or suspended for any period of time in excess of three months and no appeal therefrom is perfected within the time allowed therefor, or if there is a settlement providing for a disbarment or suspension for any period of time in excess of three months, at any stage of disciplinary proceedings, the Board shall forward a copy of the judgment or settlement to the Supreme Court of Tennessee. The Court shall review the recommended punishment provided in such judgment or settlement with a view to attaining uniformity of punishment throughout the state and appropriateness of punishment under the circumstances of each particular case. The Court may direct that the transcript or record of any proceeding be prepared and filed with the Court for its consideration.

If the Court finds that the punishment appears to be inadequate or excessive, it shall issue an order advising the Board and the respondent that it proposes to increase or to decrease the punishment. If the Court proposes to increase the punishment, the respondent attorney shall have twenty (20) days from the date of the order to file a brief and request oral argument; if the proposal is to decrease the punishment, the Board shall have twenty (20) days within which to file a brief and request oral argument. Reply briefs shall be due within twenty (20) days of the filing of the brief of the party upon whom the burden of persuasion rests. If oral argument is requested it shall be promptly granted. Upon termination of such proceedings as are requested the Court may modify the judgment of the hearing committee or the settlement in such manner as it deems appropriate.

If the judgment of a hearing committee is appealed to the circuit or chancery court and the trial court enters a judgment disbarring or suspending respondent for any period of time in excess of three (3) months and no appeal therefrom is perfected with the time allowed therefor, the trial court shall forward a copy of its judgment to the Clerk of the Supreme Court for the grand division in which the respondent maintains or maintained an office for the practice of law, and this Court shall enter an order of enforcement of said decree.

All other decrees of hearing committees or trial courts shall be duly recorded in permanent records to be maintained by the Board, and shall have the force and effect of an order of this Court. Should any respondent fail to fully comply with such decree, the Board shall immediately forward the decree of this Court for enforcement together with a report of noncompliance.

[Amended December 19, 1988.]

Section 9. Complaints Against Board Members

Complaints against members of the Board involving alleged violations of the Attorney's Oath of Office, the Code of Professional Responsibility or T.C.A. § 29-308 shall be submitted directly to the Supreme Court. Complaints against hearing committee members or Disciplinary Counsel alleging violation of the attorney's oath or the Code of Professional Responsibility shall be submitted directly to the Board.

Section 10. Refusal of Complainant to Proceed, Compromise, Etc.

Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, or compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

Section 11. Matters Involving Related Pending Civil or Criminal Litigation

Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Board in its discretion, for good cause shown.

Section 12. Service

12.1 Service upon the respondent of the petition in any disciplinary proceeding shall be made by personal service, by any person authorized by the Chairman of the Board, or by registered or certified mail at the address shown in the most recent registration statement filed by respondent pursuant to Section 20.5 or other last known address.

12.2 Service of any other papers or notices required by these Rules shall, unless otherwise provided by these Rules, be made in accordance with Rule 5.02, Tennessee Rules of Civil Procedure.

Section 13. Subpoena Power, Witnesses and Pre-trial Proceedings

13.1 Any member of a hearing committee in matters before it, and Disciplinary Counsel in matters under investigation by him, may administer oaths and affirmations and may obtain from the circuit or chancery court having jurisdiction, subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents. A respondent may, similarly, obtain subpoenas to compel the attendance of witnesses and the production of pertinent books, papers and documents before a hearing committee after formal disciplinary proceedings are instituted.

13.2 Subpoenas shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these Rules and that it is regarded as contempt of the Supreme Court or grounds for discipline under these Rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

13.3 The circuit or chancery court in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the courts of this state.

13.4 Any attack on the validity of a subpoena so issued shall be heard and determined by the court wherein enforcement of the subpoena is being sought.

13.5 Discovery proceedings by the respondent-attorney, prior to institution of proceedings for a formal hearing, may be had upon the order of the Chairman of the Board for good cause shown.

13.6 At the discretion of the hearing committee, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the committee or any member of the committee designated by its chairman.

13.7 With the approval of the hearing committee, testimony may be taken by deposition or by interrogatories if the witness is not subject to service or subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved, but need not be transcribed unless needed for appeal or certiorari.

13.8 The subpoena and deposition procedures shall be subject to the protective requirements of confidentiality provided in Section 25.

Section 14. Attorneys Convicted of Crimes

14.1 Upon the filing with the Supreme Court of a certificate demonstrating that an attorney who is a defendant in a criminal case involving a serious crime, as defined in Section 14.2 herein, has entered a plea of nolo contendere or a plea of guilty or has been found guilty by verdict of the jury, or the trial court sitting without a jury, the Court shall enter an order immediately suspending the attorney. Such suspension shall take place regardless of the pendency of a Motion for New Trial or other action in the trial court and regardless of the pendency of an appeal. Such suspension shall remain in effect pending final disposition of a disciplinary proceeding to be commenced upon such finding of guilt.

[Amended June 18, 1987.]

14.2 The term "serious crime" shall include any felony under the laws of Tennessee and any other crime a necessary element of which as determined by the statutory or common law defini-

tion of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

14.3 A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction.

14.4 Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall in addition to suspending him in accordance with the provisions of Section 14.1 of this Rule, also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in which the sole issue to be determined shall be the extent of the final discipline to be imposed, provided that a disciplinary proceeding so instituted will not be brought to hearing until all appeals from the conviction are concluded.

14.5 Upon receipt of a certificate of conviction of an attorney for a crime not constituting a serious crime, the Court shall refer the matter to the Board for whatever action it may deem warranted, including the institution of an investigation by Disciplinary Counsel, or a formal proceeding before a hearing committee, provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

14.6 An attorney suspended under the provisions of Section 14.1 of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition for which shall be determined by the hearing committee and the Board on the basis of the available evidence.

14.7 The clerk of any court in this state in which an attorney is convicted of a crime shall within ten days of said conviction transmit a certificate thereof to this Court.

14.8 Upon being advised that an attorney subject to the disciplinary jurisdiction of this Court has been convicted of a crime, Disciplinary Counsel shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this Court in accordance with the provision of Section 14.7 of this Rule. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the Disciplinary Counsel to obtain a certificate of the conviction and to transmit it to this Court.

14.9 An order suspending an attorney from the practice of law pursuant to this Rule shall not constitute a suspension of the attorney for the purpose of Section 18 unless this Court shall so order.

Section 15. Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution.

15.1 An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to the Board an affidavit stating that he desires to consent to disbarment and that:

(a) His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(b) He is aware that there is a presently pending investigation into, or proceeding involving allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(c) He acknowledges that the material facts so alleged are true; and,

(d) He submits his consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

15.2 Upon receipt of the required affidavit, the Board shall file it with this Court and this Court shall enter an order disbarring the attorney on consent.

15.3 The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of 15.1(a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

Section 16. Discipline by Consent

16.1 An attorney against whom formal charges have been served may at any stage of the proceedings before the Board, hearing committee or trial court, thereafter tender a conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of the hearing committee if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if a petition for certiorari has been filed; subject, however, in either event, to final approval or rejection by this court if the stated form of punishment includes disbarment, suspenseion or public reprimand.

16.2 A continuance in a hearing committee proceeding, or before a trial court, on the basis of such a tender shall be granted only with the concurrence of Disciplinary Counsel. Approval of such a tendered plea by the Board or trial court and, if required, by this Court shall divest the hearing committee or trial court of further jurisdiction. The final order of discipline shall be predicated upon the petition and an approved tendered conditional guilty plea.

Section 17. Reciprocal Discipline

17.1 All attorneys subject to the provisions of this Rule shall, upon being subjected to professional disciplinary action in another jurisdiction, promptly inform Disciplinary Counsel of such action. Upon being informed that an attorney subject to the provisions of these Rules has been subjected to discipline in another jurisdiction, Disciplinary Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and with this Court.

17.2 Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, this Court shall forthwith issue a notice directed to the attorney containing:

(a) A copy of said order from the other jurisdiction; and

(b) An order directing that the attorney inform the Court, within 30 days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in Section 17.4 hereof that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

17.3 In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this state shall be deferred until such stay expires.

17.4 Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of 17.2 above, this Court shall impose the identical discipline unless Disciplinary Counsel or the attorney demonstrates, or this Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court

could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) That the misconduct established warrants substantially different discipline in this State.

Where this Court determines that any of said elements exist, this Court shall enter such other order as it deems appropriate.

17.5 In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

Section 18. Disbarred or Suspended Attorneys

18.1 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise said clients to seek legal advice of the client's own choice elsewhere.

18.2 A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matters or proceedings, of his disbarment or suspension and consequent inability to act as an attorney after the effective date of his disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys of the client's own choice in his place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it

shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

18.3 Orders imposing suspension for more than three months or disbarment shall be effective on the date of entry in this Court. Orders imposing suspension of three months or less shall be effective on the date of entry by the Board. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

18.4 Within ten days after the effective date of the disbarment or suspension order, the attorney disbarred or suspended for more than three months shall file with this court an affidavit showing: (1) that he has fully complied with the provisions of the order and with these Rules; (2) all other state, federal and administrative jurisdictions to which he is admitted to practice; and (3) that he had served a copy of such affidavit upon Disciplinary Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

18.5 The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in each county in which the disciplined attorney maintained an office for the practice of law, and in such other publication(s) as the Board may determine to be appropriate.

18.6 The Board shall promptly submit a certified copy of the order of suspension or disbarment to all judges of courts of record in this State.

18.7 A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these Rules so that, upon any subsequent proceeding instituted by or against him, proof of compliance with these Rules and with the disbarment or suspension order will be available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement.

Section 19. Reinstatement

19.1 No attorney suspended for one year or more or disbarred may resume practice until reinstated by order of the Supreme Court, except as provided in Section 20.4. Any attorney suspended for less than one year and an indefinite period to be determined by the conditions imposed by the judgment may resume practice without reinstatement after filing an affidavit with the Board showing that he has fully complied with the conditions imposed by the judgment. Any attorney suspended for less than one year with no conditions imposed may resume practice without reinstatement.

19.2 A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

19.3 Petitions for reinstatement by a disbarred or suspended attorney shall be filed under this Rule, regardless when or under what procedure the suspension or disbarment occurred. The qualifications and requirements for reinstatement existing when the suspension was entered shall apply to any subsequent reinstatement proceeding. No application for reinstatement shall be filed more than 90 days prior to the time eligible for reinstatement. Such petitions shall be filed with the Board and served upon Disciplinary Counsel promptly. Upon receipt of the petition the Board shall promptly refer the petition to a hearing committee in the Disciplinary District in which the petitioner maintained an office at the time of his disbarment, or suspension. The hearing committee shall schedule a hearing at which

the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in law required for admission to practice law in this State and that his resumption of the practice of law within the State will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest. The hearing committee shall within 30 days file a report containing its findings and decisions and transmit same, together with the record, to the Board. Either party dissatisfied with the hearing committee's decision may obtain review thereof, as provided in Section 1.2 hereof.

19.4 If it is the decision of the hearing committee that petitioner be reinstated, the Board shall review the record, and within 60 days, either appeal as provided in Section 1.3 hereof or transmit to this Court the record of the proceedings before the hearing committee together with its report approving same. This Court will take such action upon the record so transmitted as it deems appropriate. No attorney will be reinstated except by order of this Court.

19.5 In all proceedings upon a petition for reinstatement, cross-examination of the respondent-attorney's witnesses and the submission of evidence, if any, in opposition to the petition shall be conducted by Disciplinary Counsel.

19.6 Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time-to-time by the Board to cover anticipated costs of the reinstatement proceeding.

19.7 If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him; provided, however, that the judgment may make such reinstatement conditional upon the payment of all or part of the costs of the proceeding, and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct

which led to his suspension or disbarment; and the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment, in the discretion of the Supreme Court, which proof may include certification by the Bar Examiners of the successful completion of examination for admission to practice.

19.8 Successive Petitions. No petition for reinstatement under this Rule shall be filed within three years following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

Section 20. Periodic Assessment of Attorneys

20.1 Every attorney admitted to practice before this Court, except those exempt under 20.2, shall pay to the Board of Professional Responsibility on or before March 1 of each year an annual fee for each year beginning in 1976 to be set by the Court from time to time.

All funds collected hereunder shall be deposited in a depository designated by order of this Court, and withdrawals therefrom shall be made only upon resolution of the Board, by officers designated by the Board, for the purpose of defraying the costs of disciplinary administration and enforcement of those rules, and for such other related purposes as this Court shall from time to time authorize or direct.

The annual fee until further orders of this Court shall be fifty-five ($55.00) dollars for each attorney payable at the beginning of each calendar year and no later than March 1 of each year.

[Amended December 14, 1983; Nov. 7, 1988.]

20.2 There shall be exempted from the application of this rule:

(a) [Stricken effective July 1, 1985.]

(b) Retired attorneys.

(c) Attorneys on temporary duty with the armed forces.

(d) Faculty members of Tennessee law schools who do not practice.

(e) Attorneys not engaged in the practice of law. The term, "the practice of law" shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy, in or out of court, rendered in respect to the rights, duties, regulations, liabilities or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document or law.

[Amended effective July 1, 1985.]

20.3 Any attorney who fails to timely pay the fee required under 20.1 above shall be summarily suspended, provided a notice of deliquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension, unless he shall have been excused on grounds of financial hardship pursuant to procedures to be established by the Board.

20.4 Any attorney suspended under the provisions of 20.3 above shall be reinstated without further order upon payment of all arrears and a penalty of 20% of the amount due from the date of his last payment to the date of his request for reinstatement.

20.5 To facilitate the collection of the annual fee provided for in 20.1 above, all persons required by this Rule to pay an annual fee shall, on or before March 1 of every year, commencing in 1976, file with the Board of Professional Responsibility of the Supreme Court of Tennessee at its central office a registration statement, on a form prescribed by this Court, seting forth his current residence and office adresses, and such other information as this court may from time to time direct. In addition to

such statement, every attorney shall file with the Board of Professional Responsibility of this Court a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to the practice of law before the courts of this State after January 1, 1986 shall file the statement required by this Rule at the time of admission; but no annual fee shall be payable until March 1 next following such date of admission.

20.6 Within 30 days of the receipt of a statement or supplement thereto filed by an attorney in accordance with the provisions of 20.5 above, the Board, acting through Disciplinary Counsel, shall acknowledge receipt thereof, on a form prescribd by this court in order to enable the attorney on request to demonstrate compliance with the requirement of 20.1 and 20.5 above.

20.7 Any attorney who fails to file the statement or supplement thereto in accordance with the requirement of 20.5 above shall be summarily suspended; provided a notice of delinquency has been forwarded to him by certified mail, return receipt requested, addressed to his last known business address at least 30 days prior to such suspension. He shall remain suspended until he shall have complied therewith, whereupon he shall be reinstated without further order.

20.8 An attorney who has retired or is not engaged in practice shall advise the Board of Professional Responsibility in writing that he desires to assume inactive status and discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law.

20.9 Upon the filing of a notice to assume inactive statues, an attorney shall be removed from the roll of those classified as active until and unless he requests and is granted reinstatement to the active rolls. Reinstatement shall be granted unless the attorney is subject to an outstanding order of suspension or disbarment or has been in inactive status for five years or more,

upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status. Attorneys who have been suspended or on inactive status for over five years before filing a petition for reinstatement to active status may be required, in the discretion of this Court, to establish proof of competency and learning in law which proof may include certification by the Bar Examiners of his successful completion of an examination for admission to practice subsequent to the date of suspension or transfer to inactive status.

20.10 The courts of this state are charged with the responsibility of insuring that no suspended attorney be permitted to file any document, paper or pleading or otherwise practice therein.

DISABILITY

Section 21. Proceedings Where an Attorney Is Declared to Be Incompetent or Is Alleged to Be Incapacitated

21.1 Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability or detained or placed in the custody of a center for the treatment of mental illness after a probable cause hearing pursuant to the procedures set forth in T.C.A. Sec. 33-6-103, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately for an indefinite period until the further order of this Court. A copy of such order shall be served upon such attorney, his guardian, and/or the director of the institution to which he had been committed in such manner as the Court may direct.

[Amended August 2, 1985.]

21.2 Whenever the Board shall petition this Court to determine whether an attorney is incapacitated from continuing the

practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, or whenever an attorney, with no disciplinary proceeding or complaint pending against him, shall petition to transfer himself to disability inactive status, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate or assignment to a hearing committee for a formal hearing to determine the issue of capacity. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him to disability inactive status on the ground of such disability for an indefinite period and until the further order of this Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance.

The Court shall provide for such notice to the respondent of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if he is without adequate representation.

[Amended August 2, 1985.]

21.3 If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to adequately defend himself, the Court thereupon shall enter an order immediately transferring the respondent to disability inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of 21.2 above.

If the Court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the

resumption of the disciplinary proceeding against the respondent.

21.4 The Board shall cause a notice of transfer to disability inactive status to be published in the legal journal and in a newspaper of general circulation in each county in which the disabled attorney maintained an office for the practice of law.

21.5 The Board shall promptly transmit a certified copy of the order of transfer to disability inactive status to the judges of all of the courts in the counties in which the disabled attorney maintained his practice.

Whenever an attorney has been transferred to disability inactive status pursuant to either Section 21.1 or 21.3 of this Rule; or, whenever the Board, pursuant to Section 21.2, petitions this Court to determine that an attorney is disabled or incapacitated from continuing the practice of law, the Board shall request such action under the provisions of Section 22 as may be indicated in order to protect the interests of the disabled or alleged disabled attorney and his clients.

[Amended August 2, 1985.]

21.6 No attorney transferred to disability inactive status under the provisions of this Rule may resume active status until reinstated by order of this Court. Any attorney transferred to disability inactive status under the provisions of this Rule shall be entitled to petition for reinstatement to active status once a year or at such shorter intervals as this Court may direct in the order transferring the respondent to disability inactive status or any modification thereof. Such petition shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, the Court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such

qualified medical experts as the Court shall designate. In its discretion the Court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the Bar Examiners of his successful completion of an examination for admission to practice.

21.7 Where an attorney has been transferred to disability inactive status by an order in accordance with the provisions of 21.1 above and, thereafter, in proceedings duly taken, he has been judicially declared to be competent, this Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon such terms as are deemed proper and advisable.

21.8 In a proceeding seeking a transfer to disability inactive status under this Section, the burden of proof shall rest with the Board. In a proceeding seeking an order of reinstatement to active status under this Section, the burden of proof shall rest with the attorney.

21.9 The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to disability inactive status, and he shall furnish to this Court written consent to each to divulge such information and records as requested by court appointed medical experts.

Section 22. Appointment of Counsel to Protect Clients' Interests When an Attorney Is Transferred to Disability Inactive Status Because of Incapacity or Disability, or He Disappears or Dies, or Is Suspended or Disbarred, or Is Alleged to Be Incapacitated From Continuing the Practice of Law Pursuant to Section 21.2

22.1 Whenever any attorney has been transferred to disability inactive status because of incapacity or disability, or is alleged to be disabled or incapacitated from continuing the practice of law pursuant to Section 21.2, or he has disappeared, or died, or abandoned his law practice, or has been suspended or disbarred and there is evidence that he has not complied with Section 18, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the presiding judge in the judicial district in which the attorney maintained his practice upon proper proof shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, deceased, suspended, disbarred, abandoning, disabled, or alleged disabled attorney and to take such action as seems indicated or necessary to protect the interests of the attorney and his clients.

[Amended August 2, 1985.]

22.2 Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

Section 23. Additional Rules of Procedure

23.1 The transcript of a record shall be made available to the respondent at respondent's expense on request made to Disciplinary Counsel. However, if there is no appeal from the judgment of the hearing committee, the hearing shall not be transcribed unless requested by one of the parties, which party

shall pay the expense of transcription. The court reporter shall preserve the shorthand record of the proceedings until the time for appeal has expired.

23.2 Except as is otherwise provided in these rules, time is directory and not jurisdictional. Time limitations are administrative, not jurisdictional. Failure to observe such directory time intervals may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

23.3. Except as otherwise provided in these Rules, the Tennessee Rules of Civil Procedure apply in disciplinary cases.

MISCELLANEOUS PROVISIONS

Section 24. Expenses, Audit, Reimbursement of Costs*

24.1 Expenses. The salaries of Disciplinary Counsel and Staff, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be paid by the Board out of the funds collected under the provisions of Rule 9.

24.2 Audit. The Board shall annually obtain an independent audit by a certified public accountant of the funds entrusted to it and their disposition and shall file a copy of such audit with this Court.

24.3 Reimbursement of Costs. In the event that a judgment of disbarment, suspension, public censure, private reprimand or disability inactive status results from formal charges of misconduct filed subsequent to this amendment, the Board shall assess against the respondent attorney the costs of the proceeding, including court reporter expenses for appearances and transcription of all hearings and depositions, the expenses of the hearing

---

* Suggested title added by Publisher.

committee in the hearing of the cause and the hourly charges of disciplinary counsel in investigating and prosecuting the complaint. The Board may for good cause grant appropriate relief to the respondent attorney in assessing such costs. The hourly charges of disciplinary counsel shall be based upon the compensation rates as provided to counsel appointed pursuant to T.C.A. 40-14-207, but shall not be subject to the maximum compensation allowed therein. In instances of suspension or disbarment resulting from formal charges of misconduct filed prior to this amendment, the Board shall assess against the respondent attorney the costs of the proceeding; including court reporter expenses for appearances and transcription of all hearings, all deposition expenses and travel expenses of disciplinary counsel in the investigation and trial of the proceeding. Payment of such costs in either event shall be required as a condition precedent to reinstatement of the respondent attorney.

[Amended December 19, 1984.]

Section 25. Confidentiality

All proceedings involving allegations of misconduct by or the disability of an attorney shall be kept confidential until and unless a recommendation for the imposition of public discipline is filed with the Supreme Court by the Board, or the respondent-attorney requests that the matter be public, or the investigation is predicated upon conviction of the respondent-attorney for a crime or, in matters involving alleged disability, this Court enters an order transferring the respondent-attorney to disability inactive status pursuant to Section 21, provided that, where review is sought pursuant to Section 1.3 the records and hearing in the circuit or chancery court and this Court of a disciplinary case shall be public to the same extent as other cases. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. This provision shall not be construed to deny access to relevant information to authorized agencies investigating the

qualifications of judicial candidates, or to other jurisdictions investigating qualifications for admission to practice; or to law enforcement agencies investigating qualifications for government employment; or to prevent the Board from reporting evidence of a crime by an attorney or other person to courts or law enforcement agencies: or to prevent the Board or Disciplinary Counsel from defending any action or proceeding now pending or hereafter brought against either of them. In addition, the Board shall transmit notice of all public discipline imposed by the Supreme Court or on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.

[Amended January 25, 1982; December 19, 1985.]

Section 26. Ethics Opinions

26.1 The Board of Professional Responsibility shall be divided into three geographic Ethics Committees with each being responsible for issuing ethics opinions from time to time as designated by the Board.

26.2 Each Committee shall act under the rules it may from time to time promulgate, but shall act only with the concurrence of two or more members.

26.3 Members of each Ethics Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

26.4 Each Ethics Committee shall exercise the powers and perform the ordinary and necessary duties usually carried out by ethics advisory bodies. Each shall:

(a) By the concurrence of a majority of its members issue and publish Formal Ethics Opinions or proper professional conduct, either on its own initiative or when requested to do so by a

member of the bar or by an officer or a committee or any other state or local bar association, except that an opinion may not be issued in a matter that is pending before a court or a pending disciplinary proceeding;

(b) Periodically publish its issued Formal Ethics Opinions to the legal profession in summary or complete form;

(c) On request, advise or otherwise help any state or local bar association in their activities relating to the interpretation of the Code of Professional Responsibility;

(d) Recommend appropriate amendments to or clarification of the Code of Professional Responsibility, if it considers them advisable;

(e) Employ such professional and/or clerical help necessary to carry out its duties; and

(f) Adopt such rules as it considers appropriate relating to the procedures to be used in considering inquiries and expressing opinions, including procedures for classifying opinions or declining requests for opinions.

26.5 (a) A formal Ethics Opinion issued and published by the Supreme Court Ethics committee shall bind the Committee, the person requesting and the Supreme Court Board of Professional Responsibility, and shall constitute a body of principles and objectives upon which members of the bar can rely for guidance in many specific situations.

(b) Requests for Formal Ethics Opinions shall be addressed to the Board of Professional Responsibility, in writing, stating the factual situation, in detail, accompanied by a short brief or memorandum citing the Rules of Court or Canons of Ethics and Disciplinary Rules involved and any other pertinent authorities and shall contain a certificate with the opinion that the matters are not pending in any court or disciplinary proceeding.

(c) An Advisory Ethics Opinion may be issued by Disciplinary Counsel orally when there is readily available precedent. The opinion shall not be binding on the Ethics Committee, the Board of Professional Responsibility, or the Court and shall offer no security to the person requesting it.

26.6 (a) There is hereby created a committee which shall be known as the Judicial Ethics Committee to consist of five (5) members appointed by this Court as follows:

One (1) judge from the Court of Appeals or Court of Criminal Appeals;

One (1) trial judge from each grand division of the state; and

One (1) general sessions judge licensed to practice law in this state.

(b) The committee shall select its own chairman.

(c) Each member shall serve for a term of four (4) years. Vacancies on the committee for an unexpired term shall be filled for the remainder of the term.

(d) The committee shall act under the rules it may from time to time promulgate, but shall act only with the concurrence of three (3) or more members.

(e) Members of the committee shall receive no compensation for their services but may be reimbursed by the Executive Secretary of this Court for their travel and other expenses incidental to the performance of their duties.

(f) The committee shall exercise the powers and perform the ordinary and necessary duties usually carried out by judicial ethics advisory bodies. By the concurrence of a majority of its members it shall issue Formal Ethics Opinions on proper professional conduct when requested to do so by a judge who is governed by the Code of Judicial Conduct, except that an opin-

ion may not be issued in a matter that is the subject of a pending disciplinary proceeding. Formal Ethics Opinions shall be filed by the committee in the office of the Executive Secretary of this Court. Said officer shall distribute a copy of such opinions to all judges governed by the Code of Judicial Conduct or see that such opinions are published in a publication generally available to judges.

(g) Requests for Formal Ethics Opinions shall be addressed to the committee, in writing, stating the factual situation, in detail, accompanied by a short brief or memorandum citing the Canons of the Code of Judicial Conduct involved and any other pertinent authorities and shall contain a certificate with the opinion that the matter is not the subject of a pending disciplinary proceeding.

(h) A Formal Ethics Opinion shall constitute a body of principles and objectives upon which judges can rely for guidance.

[Amended May 20, 1988.]

Section 27. Immunity

27.1 Communications to the board, hearing committee members or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may be instituted against any complainant or witnesses. Members of the board, hearing committee members, disciplinary counsel and staff shall be immune from civil suit for any conduct in the course of their official duties.

[Adopted effective August 5, 1985.]